

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

CARY CHAPIN, *et al.*,

Plaintiffs,

CIVIL NO. 2012/77

v.

GREAT SOUTHERN WOOD
PRESERVING, INC, *et. al.*
Defendants.

JURY TRIAL DEMANDED

REPLY TO GREAT SOUTHERN'S OPPOSITION TO STIPULATION OF DISMISSAL

The Settling Parties have now converted the Stipulation to a Joint Motion to Dismiss. The consent judgement and settlement agreement cannot be brought in this case for the reason stated in the Joint Motion to Dismiss because Defendant Whitecap Investment Corporation d/b/a Paradise is not a defendant as to plaintiffs in this District Court case. They cannot be made a party without the court losing diversity jurisdiction of the entire case. As such, the consent judgements and settlement agreement must occur in the Superior Court case. It makes no sense to try the issues of the reasonableness of the consent judgement in both the district court case and the superior court case with potential different results and the same evidence and same witnesses being used in both. It is more economic judicially as well as financially to try them all at once in the Superior Court.

The settlement documents between the Settling Parties have not yet been finalized as they are complex and have taken several redrafts. They are confidential in nature and

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will not be put on the record nor filed with the Court. They are business agreements between the parties. All that will be filed in the Superior Court will be the consent judgments and the claims assignments.

It is for a jury to decide whether the amounts of the consent judgements represent a reasonable potential judgement amount as to each settling defendant.

The Settling Parties have correctly filed a motion to allow dismissals without prejudice of the Putnam and Whitecap claims in the District Court against Great Southern so that they can be pursued together in the Superior Court in keeping with the assignment of those claims against Great Southern to the Plaintiffs.

The parties are allowed to enter into settlement agreements and plaintiffs are entitled to quantify their claims against Putnam and Whitecap. This is not an end run against any decision by this court but a legitimate decision to provide Putnam and Whitecap freedom from potential judgements and settlement costs that could bankrupt them.

Lastly, Great Southern has no claims against Putnam nor Whitecap. It makes no sense for this court to rule on the claims of Putnam and Whitecap against Great Southern as those claims have not been quantified in this case and do not mature until the amount Putnam and Whitecap owe the Plaintiffs is decided. As such, that quantification can only occur in the Superior Court without the court losing jurisdiction over this entire case. Plaintiffs have no power to prevent the Court from ruling on its claims against Great Southern, but the rest of the motions are not ripe at this time and should be dismissed without prejudice to be resolved in the Superior Court. All the discovery in this case can

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simply be used in the Superior Court and after additional discovery on the consent judgements can be tried in the Superior Court case.

RESPECTFULLY SUBMITTED
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DATED: May 31, 2016

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on May 31, 2016, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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